

Grand Jury

Spousal Privilege

In the Matter of a Grand Jury Subpoena

Supreme Judicial Court, June 22, 2006

The spousal privilege set forth in c. 233, §20, Second, does not apply to a witness summonsed to appear before a grand jury.

The defendant's wife was summonsed to appear before the grand jury investigating a homicide. She moved to quash the subpoena, citing G.L. c. 233, § 20, Second, which states in relevant part, "[N]either husband nor wife shall be compelled to testify in the trial of an indictment, complaint or other criminal proceeding against the other."

The SJC held that the plain language of the statute was clear that a spouse cannot be "compelled to testify **in the trial** of an indictment, complaint or other criminal proceeding" The Court explained, "when the Legislature intended that any witness disqualification or privilege apply to grand jury proceedings, it said so explicitly . . . [as they did in] the fourth paragraph of §20 [with the minor child disqualification]."

While the purpose of the privilege is to protect the marital relationship, the Court noted that the purpose must be offset by the other values the Legislature sought to protect such as the needs of the justice system. In weighing the damage to the marital relationship that would follow from requiring a spouse to testify before the grand jury, the Legislature could have considered that testimony before a grand jury is not public, the witness's spouse is not physically present, the witness would not be subject to cross-examination, and the outcome of the proceedings could result at most in an indictment based on probable cause, still requiring the Commonwealth to prove the defendant's guilt beyond a reasonable doubt without the spouses testimony. Therefore, "[c]ontrary to the witness's argument, there is nothing absurd or unreasonable in a determination that the grand jury's need for information outweighs the spouse's interest in not testifying."

It is important to note: 1) If a spouse testifies in the grand jury, it does not constitute a waiver of the privilege at trial; 2) While the spousal privilege in c. 233, §20, Second, does not apply to grand jury proceedings, the more broadly worded protection for private conversations between spouses (c. 233, §20, First) does apply to grand jury proceedings.